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State v. Nieto Respondent's Brief Dckt. 45126

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. MICHAEL A. NIETO, Defendant-Appellant.	)	NO. 45126 Bingham County Case No. CR-2016-8893 RESPONDENT'S BRIEF

Issue

Has Nieto failed to establish that the district court abused its discretion, either by imposing a unified sentence of 10 years, with four years fixed, upon his guilty plea to felony DUI, or by declining to retain jurisdiction?

Nieto Has Failed To Establish That The District Court Abused Its Sentencing Discretion

On December 22, 2016, Nieto drove while his driver's license was suspended and while highly intoxicated, failed to maintain his lane of travel, and "ran off the road and got stuck in the snow." (R., pp.10-11.) Upon exiting his vehicle, Nieto was unable to maintain his balance, refused to obey officers' commands, and also refused to perform field sobriety tests or to submit

to alcohol testing. (R., pp.10-11.) Officers arrested Nieto and, while conducting an inventory of his vehicle, "an un-opened Canadian Mist alcoholic beverage was located. Another empty Canadian Mist bottle was located shoved under the passenger seat." (R., p.11.) Officers also noted that Nieto's vehicle "matched the suspect vehicles [sic] description and the front end damage also match[ed] the description of damage provided" by the victim of a "hit and run property damage crash that Blackfoot PD had been sent to about an hour prior." (R., p.10.) Officers obtained a warrant for a blood draw, which revealed that Nieto's blood alcohol concentration was .236. (R., pp.11, 55.) Nieto was transported to the Bingham County Jail, where he was booked for DUI, DWP, open container, and "second offense insurance," and was also served with citations for leaving the scene of a property damage crash and failing to notify of a property damage crash for the earlier hit and run. (R., p.11.)

The state charged Nieto with felony DUI (prior felony DUI conviction within 15 years), unlawful transport of alcoholic beverages by driver, DWP, and operating a motor vehicle without vehicle insurance (second or subsequent offense). (R., pp.54-58.) Pursuant to a plea agreement, Nieto pled guilty to felony DUI and the state dismissed the remaining charges as well as the case in which Nieto was charged with leaving the scene of a damage accident and failing to give immediate notice of an accident. (R., pp.66-68, 80-82; PSI, p.11.[1]) The district court imposed a unified sentence of 10 years, with four years fixed. (R., pp.98-101.) Nieto filed a notice of appeal timely from the judgment of conviction. (R., pp.106-08.)

Nieto asserts both that his sentence is excessive, and that the district court abused its

[1] PSI page numbers correspond with the page numbers of the electronic file "PSI – 04-04-2017.pdf."

discretion by declining to retain jurisdiction upon imposing his sentence, in light of his alcohol abuse and willingness to seek treatment in the community, acceptance of responsibility, belief that "'church, family & friends' will help him stay sober," and because the presentence investigator recommended the retained jurisdiction program. (Appellant's brief, pp.3-6 (quoting PSI, p.14).) Nieto has failed to establish an abuse of discretion.

When evaluating whether a sentence is excessive, the court considers the entire length of the sentence under an abuse of discretion standard. State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2016); State v. Stevens, 146 Idaho 139, 148, 191 P.3d 217, 226 (2008). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 687, 391 (2007). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. McIntosh, 160 Idaho at 8, 368 P.3d at 628 (citations omitted). To carry this burden the appellant must show the sentence is excessive under any reasonable view of the facts. Id. A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution. Id. The district court has the discretion to weigh those objectives and give them differing weights when deciding upon the sentence. Id. at 9, 368 P.3d at 629; State v. Moore, 131 Idaho 814, 825, 965 P.2d 174, 185 (1998) (court did not abuse its discretion in concluding that the objectives of punishment, deterrence and protection of society outweighed the need for rehabilitation). "In deference to the trial judge, this Court will not substitute its view of a reasonable sentence where reasonable minds might differ." McIntosh, 160 Idaho at 8, 368 P.3d at 628 (quoting Stevens, 146 Idaho at 148-49, 191 P.3d at 226-27). Furthermore, "[a] sentence fixed within the limits

prescribed by the statute will ordinarily not be considered an abuse of discretion by the trial court." Id. (quoting State v. Nice, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982)).

The decision whether to retain jurisdiction is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion. State v. Lee, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). The primary purpose of a district court retaining jurisdiction is to enable the court to obtain additional information regarding whether the defendant has sufficient rehabilitative potential and is suitable for probation. State v. Jones, 141 Idaho 673, 677, 115 P.3d 764, 768 (Ct. App. 2005). Probation is the ultimate goal of retained jurisdiction. Id. There can be no abuse of discretion if the district court has sufficient evidence before it to conclude that the defendant is not a suitable candidate for probation. Id.

The maximum prison sentence for felony DUI (prior felony DUI conviction within 15 years) is 10 years. I.C. §§ 18-8005(6), -8005(9). The district court imposed a unified sentence of 10 years, with four years fixed, which falls well within the statutory guidelines. (R., pp.98-101.) Furthermore, Nieto's extensive criminal history – particularly of committing dangerous and violent crimes – justifies his prison sentence. Nieto's criminal record dates back to 1986 and includes convictions for fleeing from a police officer, seven convictions for DUI, inattentive/careless driving (amended from DUI), driving a vehicle without owner's consent (amended from grand theft), six convictions for DWP, two convictions for failure to purchase a driver's license, open container, three convictions for disturbing the peace (one of which was amended from domestic battery), battery – domestic violence, resisting/obstructing officers, indecent exposure, and unlawful entry. (PSI, pp.3-10.) His record also includes two withheld judgments and at least 17 probation violations. (PSI, pp.4-11.) At the time that he committed

the instant offense, Nieto had charges pending for open container, resisting/obstructing officers, and another DUI (later amended to pedestrian under the influence of alcohol). (PSI, p.10.)

In the instant offense, Nieto once again chose to drive while intoxicated and without a valid driver's license and crashed into a car that was stopped at a red light, damaging both his vehicle and the other driver's vehicle. (PSI, pp.3, 57.) After agreeing to pull off the road to exchange insurance information with the other driver, Nieto instead drove away, fleeing the scene without providing his information to the other driver and without reporting the crash to the authorities. (PSI, p.57.) Nieto then "drove around" for approximately another hour before he once again crashed his vehicle, this time into a snow bank. (PSI, p.3; R., p.10.) When officers responded, Nieto was so intoxicated that he could not maintain his balance upon exiting his vehicle and he had to be supported to keep from falling. (R., p.10.)

Nieto later stated that, on the night that he committed the instant offense, he chose to "dr[i]ve around" after consuming alcohol rather than return to his sister's residence – where he was living – because he was "in fear she would be upset because [he] was drinking." (PSI, pp.3, 12.) Despite having reported that he had "good relationships" with his siblings, son and father, it is apparent that their support has not prevented Nieto from continuing to consume alcohol and commit crimes. (PSI, pp.12-13.)

Nieto has been afforded an abundance of rehabilitative opportunities, including a prior rider, drug court, Wood Court, two detoxification programs, four inpatient treatment programs, and "several" outpatient programs. (PSI, pp.11, 30.) He nevertheless continues to endanger the community by driving while intoxicated. The substance abuse evaluator recommended a "highly structured" residential treatment program, stating, "[Nieto] has a history of inability to reduce use of substances despite acknowledging severe consequences and repeated attempts to do so."

(PSI, p.39.) The presentence investigator likewise noted that Nieto "has been unable to sustain sobriety for any length of time," and concluded that Nieto "represents a significant threat to the community as he continues to drink and drive, regardless of personal and legal consequences, and puts at risk the safety of other drivers as well as himself." (PSI, p.16.)

Nieto's ongoing DUI offending demonstrates that he has not been deterred by prior legal consequences and that previous treatment attempts have been to no avail. His continued disregard for the law and the safety of others puts society at risk. Correctional treatment in the penitentiary is appropriate, due to the severity of Nieto's substance abuse, his multiple failed attempts to rehabilitate in the community, and his continued decisions to drive while intoxicated. Given any reasonable view of the facts, Nieto has failed to establish that the district court abused its discretion by imposing and executing his sentence.

Conclusion

The state respectfully requests this Court to affirm Nieto's conviction and sentence.

DATED this 30th day of October, 2017.

__/s/_Lori A. Fleming_____
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 30th day of October, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

KIMBERLY A. COSTER
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General